

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No: 11780 of 2002

Between:

- 1 The A.P. Dairy Development Co-operative Federation Ltd.,
Rep by Managing Director, Lalapet, Hyderabad.
- 2 The Chairman & Board of Directors, The A.P. Dairy Development Cooperative
Federation Ltd., Lalapet, Hyderabad.

..... PETITIONERS

AND

- 1 The Presiding Officer, Addl. Industrial Tribunal Cum Labour Court
Chandra Vihar, Nampally, Hyderabad.
- 2 S. Krishna , S/o Sattaiah
R/o No. 13.4.680, Karwan Sahu,
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Certiorari after calling for the records relating to the Award Dt:18-12-01 passed in ID.No.116/00 on the file of the Addl. Industrial Tribunal Cum- Labour Court Hyderabad and quash the same as illegal and arbitrary.

Counsel for the Petitioners: MR.N.RAJESWAR RAO

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2 : Aijaz Ahmad

The Court made the following:

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ORDER:

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This writ petition is filed seeking writ of certiorari after calling for the records relating to the Award dated 18.12.2001 in I.D.No.116 of 2000 on the file of the Additional Industrial Tribunal-cum-Labour Court, Hydeabad.

Learned counsel for the petitioner-Corporation contended that the proved misconduct of the second respondent is not shocking to the conscience of this Court and therefore, the proved misconduct needs deterrent punishment and therefore, the Labour Court is not justified in ordering reinstatement of the second respondent. Hence, he prays to set aside the award of the Labour Court.

On the other hand, learned counsel for the second respondent contended that after recording the reasons, the Labour Court ordered for reinstatement of the second respondent inasmuch as the punishment imposed by the petitioner to the second respondent is severe than the misconduct committed by the second respondent.

The facts are not in dispute. The manner of conducting enquiry after giving reasonable opportunity to the second respondent and the findings of the enquiry officer are not in dispute. Unless the order of punishment is shocking to the consciences of the Court, normally this Court will not interfere with the findings of the Tribunal. The observation of the Tribunal is that the punishment of removing the second respondent from service imposed by the petitioner is severe than the misconduct committed by the second respondent. The Labour Court has not recorded its reasons for coming to such a conclusion.

The misconduct alleged against the second respondent is that the second respondent was absent without applying leave and without informing the concerned authorities i.e., from 19.10.1997 to 23.12.1997 and 14.1.1998 to 16.03.1998. If the

misconduct attributed against the petitioner is only on these two grounds, then certainly the punishment of removal would be shocking to the conscience of this court. But, as seen from the affidavit filed in support of the writ petition, this is not the first occasion the second respondent has unauthorizedly absented from his duties. The Corporation imposed punishment on the second respondent on several occasions i.e., a penalty of fine on one occasion, withholding increment on two occasions for his unauthorized absence for about 55 days in the year 1989-90, 130 days in the year 1999, 100 days in the year 1991 and for about more than three months in the year 1994 and 139 days during the year 1995. The second respondent was in the habit of absenting himself without applying any leave or without or without informing the petitioner. That attitude would itself show the disinterest of the second respondent towards his duty.

The enquiry has been conducted after affording reasonable opportunity to the second respondent to rebut the allegations and after completion of enquiry, the enquiry officer submitted a report. It is not the case of the second respondent that the principles of natural justice have been violated while conducting enquiry or it is not even his case that the findings of the enquiry officer are not based upon any evidence or perverse. It is only his case that the punishment of removing him from service is severe than his proved misconduct. The conduct and attitude of the second respondent is deplorable inasmuch as he did not even care to apply for leave. Therefore, the order of reinstatement of the second respondent with continuity of service cannot be said to be proportionate with the misconduct proved. On the earlier occasions also the management has taken a lenient view in imposing the penalty of fine for his unauthorized absence.

Having taken the totality of circumstances into consideration, this court is of the opinion that the misconduct alleged in the enquiry coupled with the conduct of the petitioner would clearly require maximum punishment of removal from service. That decision has been taken by the disciplinary authority and that punishment cannot be said to be shocking to the conscience of the Court. Hence, the order under challenge is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the award dated 18.12.2001 passed I.D.No. 226 of 2000 on the file of the Additional Industrial Tribunal-cum-Labour Court, Hyderabad. No costs.

13.06.2005

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To

- 1 The Presiding Officer, Addl. Industrial Tribunal Cum Labour Court
Chandra Vihar, Nampally, Hyderabad.
- 2 2 CCs to the G.P. for Labour, High Court buildings, Hyderabad (OUT)
- 3 2 CD copies
- 4 1 CC to MR.AIJAZ AHMED